IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 14769 of 2005

Between:

J. Srinivas, s/o. J. Mallaiah, Railway Contractor, R/o. 6-7-116, Subhash Nagar, Nizamabad.

..... PETITIONER

AND

1 The Chief Engineer/Construction, South Central Railway, Secunderabad.
2 the Chief Administrative Officer/Construction, South Central Railway, Secunderabad-71.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents terminating the contract granted to the petitioner in respect of Reach-XVI and issuing tender notification while the contract in respect of the said reach is subsisting and not considering the representation dt. 05.07.2005 of the petitioner as arbitrary, ille3gal, unjust, discriminatory and violative principles of natural justice and consequently set aside the order or R-1 dt. 10.11-05-05 and the tender notification dt. 2.6.2005 and permit the petitioner to continue the work in respect of reach -XVI.

Counsel for the Petitioner : MR.C.M.R.VELU

Counsel for the Respondent Nos.1 & 2: MR.A.RAJASHEKAR REDDY (ASST SOLICITOR GEN)

The Court at the admission stage made the following :

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ORDER:

The writ petition is filed complaining that the proceedings of the 1st respondent, dated 10/11-5-2005, terminating the contract of the petitioner in respect of the Karimnagar-Jagityal (New BG Line) – Earthwork in formation and cutting and construction of minor bridges from Ch.67000 M to 699900 M between Poduru and Jagityal stations – Reach – XVI, under Clause 62 (vi) of the general conditions of the contract with an intimation that the left over works will be carried out at the petitioner's risk and cost, as illegal, arbitrary and discriminatory.

The contract that the petitioner had with the respondents is a non-statutory contract. The dispute between the petitioner and the respondents consequent on the impugned order of termination is a dispute, which is contractual in nature. Such disputes have an adjudicating discretion before the civil Court of competent jurisdiction or before an arbitrator, if there be an existing and operative arbitration clause between the parties. These disputes are not to be adjudicated before this Court under Article 226 of the Constitution of India, in view of the decisions of the Apex Court in ***Radhakrishna Agarwal v. State of Bihar*** and ***Assistant Excise Commissioner v. Issac Peter.***

In view of the above position of law, the writ petition is dismissed. The petitioner is at liberty to pursue the remedies outside. No order as to costs.

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GODA RAGHURAM, J

Dated:11.07.2005

GJ

To

1 The Chief Engineer/Construction, South Central Railway, Secunderabad.
2 The Chief Administrative Officer/Construction, South Central Railway, Secunderabad-71.

3 Two C.Cs. to the Assistant Solicitor General, High Court of A.P., Hyderabad. (O.U.T.)

4 Two C.D. copies.